



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Public Assistance Collections Unit 5173, Petitioner

DECISION

v.
[REDACTED]

FOF/149304

PRELIMINARY RECITALS

Pursuant to a petition filed May 10, 2013, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the Public Assistance Collections Unit (PACU) 5173 to disqualify Vincent E. Moore from receiving FoodShare benefits (FS) for a period of ten (10) years, a hearing was held on June 19, 2013, at Racine, Wisconsin.

The issue for determination is whether the respondent made a fraudulent statement or representation with respect to his identity or place of his residence in order to receive multiple food stamp benefits simultaneously, contrary to 7 C.F.R. §273.16(b)(5).

NOTE: At the beginning of the hearing when stating the issue, the Respondent indicated that he was in Wisconsin for a short time and that he did not receive benefits in Ohio during the time in question. However, when it was his turn to offer testimony, the Respondent exercised his right to remain silent.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Department of Health Services
Division of Health Care Access and Accountability
1 West Wilson Street
Madison, Wisconsin 53703
By: Judy Johnson, Interstate PARIS specialist
PACU - 5173
P.O. Box 8939
Madison, WI 53708-8938

Respondent:

[REDACTED]
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Respondent (CARES # [REDACTED]) was a resident of Racine County who received FoodShare benefits in Wisconsin during the time period of March - October 2012.
2. On February 9, 2011, Respondent applied for food stamps in the State of Ohio. On his application he listed an address of [REDACTED]. (Exhibit 1, pg. 40)
3. As proof of his Ohio residence, Respondent provided a Landlord Inquiry. (Exhibit 1, pg. 46)
4. On February 28, 2012, the Ohio agency sent Respondent a reapplication packet. (Exhibit 1, pg. 50)
5. The Running Record Comments from Ohio indicate the Ohio agency interviewed Respondent on March 2, 2012, at which time, Respondent indicated he was still living at the [REDACTED] address. (Id.)
6. The Running Record Comments for August 12, 2012, indicate that Respondent completed an Interim Report and reported no changes. (Exhibit 1, pg. 51)
7. Respondent received \$200 in Food Stamp benefits in Ohio every month from February 2011 through May 2013. (Exhibit 1, pgs. 54-58)
8. The Ohio benefits were used during the time in question, March 2012 through October 2012 and totaled \$1400. (Exhibit 1, pgs. 61-64)
9. There is no indication the Running Record Comments that Respondent informed the Ohio agency that he had moved to Wisconsin in late March 2012. (Exhibit 1, pgs. 48-53)
10. On March 23, 2012, Respondent completed a FoodShare application in Wisconsin, indicating that he was living at [REDACTED] (Exhibit 1, pg. 11). In that application, Respondent indicated that he was not receiving any FoodShare benefits in March 2012. (Exhibit 1, pg. 12)
11. Respondent signed the application under a paragraph that read, "I certify, under penalty of perjury and false swearing, that I understand the questions and statement on the application summary and my answers are correct and complete to the best of my knowledge, including information provided about the citizenship status of each household member applying for benefits." (Exhibit 1, pg. 10)
12. Respondent used his Wisconsin Electronic Benefits (EBT) card in Toledo, Ohio, on August 27, 2012, September 14, 2012, September 15, 2012, October 25, 2012 and October 30, 2012. Most of the other time, it was used in Racine, Wisconsin. (Exhibit 1, pg. 36-39)
13. On October 2, 2012, the county agency received an interstate match, indicating Respondent was also receiving Food Stamp benefits in Ohio. (Exhibit 1, pg. 23)
14. On February 28, 2013, the Wisconsin Public Assistance Collections Unit (PACU) sent to Respondent, at the [REDACTED] address in Ohio, a Notification of FoodShare Overissuance indicating that he had been overissued FoodShare benefits in the amount of \$1458.00 for the period 3/23/12 to 10/31/12. (Exhibit 1, pg. 26-27)
15. On May 15, 2013, PACU sent Respondent, via certified mail, to the [REDACTED] address, a Snap/FoodShare Charge and Summary of Evidence, and an Administrative Disqualification Hearing Notice, indicating that they wished to suspend him from the FoodShare program for 10 years due to a receipt of duplicative benefits. Respondent received and accepted the documentation. (Exhibit 1, pgs. 2-7)

DISCUSSION

The county agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household.

Per 7 C.F.R. §273.16(b)(5), "an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits

simultaneously shall be ineligible to participate in the Program for a period of 10 years.” *See also FoodShare Wisconsin Handbook, § 3.14.12*

The PACU bears the burden to prove, by clear and convincing evidence, that the Respondent made a fraudulent statement regarding his identity or place of residence in order to receive multiple food stamp benefits. *See 7 C.F.R. §§273.16(e)(6)*

In the case at hand, the PACU asserts that Respondent intentionally provided false information in order to receive benefits in both Ohio and Wisconsin. Respondent asserts there was no violation, because he did not receive benefits in Ohio, during the time that he lived in Wisconsin.

First, Respondent’s claim that he was not receiving benefits in Ohio between March 2012 and October 2012 is not supported by the record. The Ohio Food Stamp Issuance History indicates that Respondent did, in fact, receive benefits between March 2012 and October 2012.

Second, Respondent either 1) provided false information on his Wisconsin application for benefits in March 2012, when he indicated he was living in Racine, or 2) he lied by omission, by failing to tell Ohio that he moved to Wisconsin in March 2012 and provided false information to Ohio in August 2012 when he completed his interim report, reported no changes and continued to receive benefits in Ohio.

Third, there is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. *See John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. There is nothing in the record to rebut the presumption that Respondent knew that the misrepresentations that he made regarding his residence violated the law and would result in his receipt of duplicate benefits from Ohio and Wisconsin, at the time he applied for benefits in Wisconsin. Clear and convincing evidence supports a contrary conclusion:

First, the law clearly prohibits individuals from making false or misleading statements in their applications for food stamp benefits. Wis. Stat. §49.795(2) provides in relevant part, “No person may misstate or conceal facts in a food stamp program application or report of income, assets or household circumstances with intent to secure or continue to receive food stamp benefits.”

Second, the Running Record Comments indicate that Respondent completed an interview on March 2, 2012 confirming the [REDACTED] address in Ohio, only a few weeks before he came to Wisconsin to apply for benefits, but there is no evidence in the record showing that the Respondent ever told Ohio that he moved to Wisconsin or to otherwise stop giving him benefits.

Third, Respondent completed an interim report in Ohio in August 2012 and continued to receive food stamp benefits in Ohio, while receiving FoodShare benefits in Wisconsin. Finally, Respondent received and used the FoodShare/Food Stamp benefits issued by both states.

Based upon that same evidence, it is reasonable to conclude that Respondent knew that he was violating the rules of the FoodShare program when he provided misleading information about his residence and that he would be receiving duplicate benefits in two states as a result of his actions. Indeed, Petitioner put forth no evidence to refute the information contained in the documents from Ohio, which I find reliable as regularly kept business records.

CONCLUSIONS OF LAW

The respondent made a fraudulent statement or representation with respect to his place of residence in order to receive multiple food stamp benefits simultaneously, contrary to 7 C.F.R. §§273.16(b)(5),

THEREFORE, it is

ORDERED

That the Respondent is hereby ineligible to participate in the FoodShare program for a period of ten years, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. See also, 7 C.F.R. sec. 273.16(e)(4) for the specific time limits for claiming good cause for missing the scheduled hearing. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

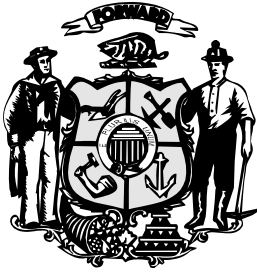
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of June, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 28, 2013.

PACU - 5173

Public Assistance Collection Unit

Division of Health Care Access and Accountability